

OGC Has Reviewed

30 October 1970

MEMORANDUM FOR: Director of Central Intelligence

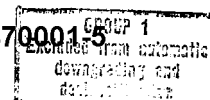
SUBJECT: Refusal of Information to the Congress

1. This memorandum contains a suggestion in paragraph 7 for the Director of Central Intelligence.

2. The problem of refusal by the executive branch to congressional requests for information has been the subject of voluminous writings and opinions by lawyers, students of government and others. What it boils down to is that the question is fundamentally one of power politics, not of law. This is illustrated by a Presidential Memorandum signed by President Nixon on March 24, 1969 (Tab A) concerning the exercise of executive privilege. The President's position is that he will invoke this authority only in the most compelling circumstances and after rigorous inquiry into the actual need for its exercise. If the head of an executive agency feels there is a substantial question as to the need for invoking executive privilege, he must consult first with the Attorney General who, if he agrees, will raise the question with the counsel to the President who, in turn, will obtain the President's decision. No statute or legal precedent is cited to support the exercise of this privilege. The memorandum also states that it is the basic policy of this Administration to comply to the fullest extent possible with congressional requests for information.

3. This policy was modified in some part for intelligence information by the President's instructions to you on 24 June 1969 (Tab B). Basically this directed that we not put substantive intelligence information in letters to Congress and that we keep oral briefings as general as may be feasible under the circumstances. Within these limitations we should attempt to be cooperative with congressional inquiries.

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4. A special situation exists with the Joint Committee on Atomic Energy which cites a specific statute as requiring complete response to their inquiries. Fundamentally this does not rule out the exercise of executive privilege but so far the executive branch has not seen fit to challenge the Joint Committee's claim and has acceded to its requests including actual intelligence estimates. In addition, Mr. McCone decided to allow access to these estimates to the Preparedness Investigating Subcommittee of the Senate Armed Services Committee although the material was to be retained for safekeeping in the Joint Committee's facilities. Aside from this it has been our practice to respond to committee requests for information insofar as possible with oral briefings. In some cases we have used blind memoranda not attributable to the Agency.

5. With the staffs of our Subcommittees in Congress, we have from time to time shown them actual Agency publications and this may have been done in a few instances outside of those Subcommittees.

6. From the foregoing it seems obvious that it is most desirable to avoid a flat confrontation. About a year ago, Mr. Fulbright asked Mr. Elliot L. Richardson, Under Secretary of State, to release a sensitive National Estimate to the Foreign Relations Committee. Mr. Richardson pointed out that it was not within his prerogative to respond to such a request. Speculating that Mr. Fulbright might approach us for this paper, I discussed it with the Office of Legal Counsel in the Department of Justice who said that in view of the sensitivity of the information and the sources involved they would recommend to the Attorney General that we be supported if it appeared necessary to claim executive privilege. Mr. Fulbright did not follow up on this.


7. In connection with the present request from Mr. Fulbright for the Agency paper on Communist infiltration in the South Vietnamese governmental structure, it appears to me that it is not a very good one on which to ask the President to exercise his privilege to deny Mr. Fulbright's request. Indeed, considering the distribution of this paper and the recent publicity as to its content, I have some doubt as to whether the Attorney General or the counsel to the President would back us up. I believe that we should reply to Mr. Fulbright's letter

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along the lines of Legislative Counsel's draft and if there is any follow-up we should offer an oral briefing on the current status of infiltration on the grounds that the report in question is dated and current information gives a more accurate picture.

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LAWRENCE R. HOUSTON
General Counsel

Atts - 2 (Tabs A & B)

cc: ExDir-Compt
Legislative Counsel
✓ OGC Subject - EXECUTIVE PRIVILEGE
OGC Chrono

OGC:LRH:mks

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69-1644

THE WHITE HOUSE
WASHINGTON

✓ OGC SUBJECT
SECURITY
Original to OLC 4/2/6

March 24, 1969

MEMORANDUM FOR THE HEADS OF

EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: ESTABLISHING A PROCEDURE TO GOVERN COMPLIANCE
WITH CONGRESSIONAL DEMANDS FOR INFORMATION

The policy of this Administration is to comply to the fullest extent possible with Congressional requests for information. While the Executive branch has the responsibility of withholding certain information the disclosure of which would be incompatible with the public interest, this Administration will invoke this authority only in the most compelling circumstances and after a rigorous inquiry into the actual need for its exercise. For those reasons Executive privilege will not be used without specific Presidential approval. The following procedural steps will govern the invocation of Executive privilege:

1. If the head of an Executive department or agency (hereafter referred to as "department head") believes that compliance with a request for information from a Congressional agency addressed to his department or agency raises a substantial question as to the need for invoking Executive privilege, he should consult the Attorney General through the Office of Legal Counsel of the Department of Justice.
2. If the department head and the Attorney General agree, in accordance with the policy set forth above, that Executive privilege shall not be invoked in the circumstances, the information shall be released to the inquiring Congressional agency.
3. If the department head and the Attorney General agree that the circumstances justify the invocation of Executive privilege, or if either of them believes that the issue should be submitted to the President, the matter shall be transmitted to the Counsel to the President, who will advise the department head of the President's decision.

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4. In the event of a Presidential decision to invoke Executive privilege, the department head should advise the Congressional agency that the claim of Executive privilege is being made with the specific approval of the President.
5. Pending a final determination of the matter, the department head should request the Congressional agency to hold its demand for the information in abeyance until such determination can be made. Care shall be taken to indicate that the purpose of this request is to protect the privilege pending the determination, and that the request does not constitute a claim of privilege.

Richard Nixon

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24 June 1969

MEMORANDUM FOR THE RECORD

SUBJECT: Director's Conversation with the President
Re Congressional Relations

1. On the afternoon of 23 June the Director told the DDCI and me that he had just come from a conversation with the President on the above subject during which the President laid down the following guidelines:

- a. We will write no letters to the Hill on substantive matters.
- b. Oral briefings should be as "unspecific" as possible.
- c. The Director will personally appear only before standing congressional committees. Other committees and individuals will be briefed by other Agency officers (who, per the Director's desire, should be accompanied by a representative of OLC as a "witness.")

2. Subject to the above restrictions, we should try to be as "forthcoming" as possible with Congress.

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JOHN M. MAURY
Legislative Counsel

Distribution:

Original - Subject (Congressional Relations)

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EYES ONLY

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ACTION	DIRECT REPLY	PREPARE REPLY	
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COMMENT	FILE	RETURN	
CONCURRENCE	INFORMATION	SIGNATURE	
Remarks: If you talk to the Director about this Fulbright request it might be well to have in mind our conversation with Dave Abshire and the fact that this would seem to be in line with the way they try to handle such substantive problems. <div style="text-align: center;"> <i>LS</i> LRHouston </div>			
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FROM: NAME, ADDRESS AND PHONE NO.		DATE	
General Counsel 7 D 01 Hqs 		10/30/70	
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